IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 12521 of 2004(N)

PETITIONER:

THE STATE FARMS CORPORATION OF INDIA
LIMITED, CENTRAL STATE FARM, ARALAM FARM P.O.,
KANNUR 670 673, REP. BY ITS DIRECTOR.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.AMRITA JAYARAM

RESPONDENTS:

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1. P.D.MATHAI, PUTHENPURACKAL HOUSE,
KEEZHPALLY P.O., KANNUR 670 673.

2. THE CONTROLLING AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT 1972 & THE ASSISTANT
LABOUR COMMISSIONER (CENTRAL), COCHIN,
OLIMUGHAL, KAKKANAD, COCHIN - 30.

3. THE APPELLATE AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT 1972, & THE REGIONAL
LABOUR COMMISSIONER (CENTRAL), COCHIN, KENDRIYA
SHRAM SADAN, OLIMUGHAL, KAKKANAD, COCHIN - 30.

BY ADV. SMT.GIRIJA.L., ADDL.CGSC
SRI.R.SURENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.12521/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF OTHE DECISION NO:48(38)02-ALC/CHN DATED 31.3.2003 OF THE SECOND RESPONDENT.

EXT. P2: COPY OF THE MEMORANDUM OF APPEAL AND THE AFFIDAVIT DATED 27.5.2003 FILED BEFORE THE THIRD RESPONDENT.

EXT. P3: COPY OF DECISION OF THE THIRD RESPONDENT IN G.A. NO.30/2003-B1 DATED 9.12.2003.

EXT. P4: COPY OF THE DECISION DATED 5.1.2004 OF THE THIRD RESPONDENT IN G.A. NO:33/2003-B1.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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W.P.(C) No. 12521 of 2004(N)

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Dated, this the 5th day of December, 2007

JUDGMENT

The employer, which is a company registered under the Companies Act, in a gratuity claim under the Payment of Gratuity Act, is the petitioner herein. They are challenging Exts. P1, P3 and P4 orders of the Controlling Authority and the Appellate Authority under the Act, passed in favour of the 1st respondent employee. The legal question raised in this writ petition is as to whether an employer can deduct certain amounts allegedly due from the employee to the employer from the amount of gratuity due to the employee under the Payment of Gratuity Act.

2. The petitioner herein is a Government Company. The 1st respondent opted for voluntary retirement under a Voluntary Retirement Scheme introduced by the Company. The amounts due as per the scheme were paid to him. Later on, when gratuity was paid to him, an amount of Rs.70432/- was deducted from

the gratuity amount, which according to the petitioner is excess exgratia amount mistakenly paid under the Voluntary Retirement Scheme. The 1st respondent approached the Controlling Authority under the Payment of Gratuity Act seeking payment of balance gratuity amount due to him. Rejecting the contention of the petitioner that they are entitled to deduct the excess amount of Rs.70432/- allegedly paid to the 1st respondent in excess of the amounts due to him, the Controlling Authority directed the petitioner to pay an amount of Rs.74962/- as balance gratuity due to the 1st respondent. The contention of the petitioner that they are entitled to deduct the excess payment mistakenly made, from the gratuity amount, was rejected on the ground that Section 13 of the Act prohibits such deduction. Ext. P1 is the order of the Controlling Authority. Petitioner's appeal against that order was rejected by Ext. P3 order of the Appellate Authority. By Ext.P4 order the Appellate Authority allowed the appeal filed by the 1st respondent claiming interest on the balance gratuity amount, directing payment of interest @ 10% from 15.3.2001.

3. In this writ petition, the contention of the petitioner is

that the Payment of Gratuity Act does not prohibit deduction of amounts due from the employee to the employer, from the gratuity amount due to the employee and in the absence of any such prohibition in the Act, the employer is entitled to deduct from the gratuity amount, amounts legally due to the employer from the employee. He submits that the reliance by the lower authority on Section 13 is totally misplaced as the same does not prohibit such deduction. The petitioner relies on two decisions, one of the Delhi High Court and the other of the Calcutta High Court in support of their contention, wherein it has been held that the Payment of Gratuity Act does not put an embargo on the employer from deducting amounts legally due to it from the employee.

4. The counsel for the 1st respondent would submit that the deduction can be made only if there is a specific provision in the Act enabling the employer to deduct amounts from the gratuity. He would submit that gratuity being a retirement benefit due to an employee, without an enabling provision in the Act for deduction of amounts due to the employer therefrom, the employer is not entitled to deduct any amounts from the amount

of gratuity. He contends that the underlying principle in Section 13 would be applicable to the question of deduction also. According to him, the underlying principle of Section 13 is to protect the gratuity amount payable to an employee in the hands of the employer. Since the very object of Section 13 is to protect the gratuity amount of the employee while the same is still in the hands of the employer, that principle should be extended to deduction of amount by the employer himself also, is the submission made. The counsel for the 1st respondent further submits that otherwise unscrupulous employers would deduct amounts from the gratuity due to the employee without any justification, the prevention of which is the object of the Section. He would further submit that assuming without admitting that deduction as claimed by the petitioner is permissible, that can only be of an amount ascertained by an independent authority as due from the employee and not amounts as claimed by the petitioner which has not been done in this case. He would submit that at least that should be an amount about which the employee cannot raise any dispute whatsoever.

5. I have considered the rival contentions in detail. The concept of gratuity has been the subject matter of judicial interpretation in several decisions over the years. Even before the enactment of the Payment of Gratuity Act, 1972, the Supreme Court, in the decision of Indian Hume Pipe Co. Ltd. v. Workmen ((1959) 2 LLJ 830 (SC)) held thus:

> "Gratuity is a kind of retirement benefit like the provident fund or pension. At one time it was treated as payment gratuitously made by the employer to the employee at his pleasure, but as a result of long series of decisions of industrial tribunals, gratuity has now come to be regarded as legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them after retirement, whether the retirement is the result of the rules of superannuation or physical disability. The general principle underlying such gratuity schemes is that by their length of service workmen are entitled to claim certain amount as retiral benefit."

Comparing gratuity with pension, the Supreme Court, in Burhanpur Tapti Mills Ltd. v. B.T.Mills Mazdoor Sangh ((1965) 1 LLJ 453) held thus:

> "A scheme of gratuity and scheme of pensions have much in common. Gratuity is a lump sum payment while pension is periodic payment of a stated sum. They are both "efficiency devices", and are considered necessary for an "orderly human elimination" from industry of superannuated or disabled employees, who would continue in employment even though they function inefficiently.... It compensates the employee who as he grows old knows that some compensation for the gradual destruction of his wage earning capacity is being built up .... In this connection we cannot compare compensation for retrenchment and provident fund on the one hand with gratuity or pension on the other. Compensation for retrenchment is solatium for premature termination of employment. Contribution to the provident fund is

> designed to induce thrift so that the employee may lay by from his present earning a pension for a rainy day or for his old age. As the workman cannot be expected to spare very much, regard being had to the gap between what he earns and what he must spend, the employer is expected to make a contribution. Gratuity is a retiral benefit of very different kind because it is earned by giving service. The existence of any one of three schemes, therefore, does not obviously overlap any of the other two."

In Delhi Cloth & General Mills Co. Ltd. v. Workmen ((1968) 36 FJR 247) the Supreme Court observed thus:

> "Gratuity paid to workmen is intended to help them after retirement or superannuation, death, retirement, physical incapacity, disability or otherwise. The object of providing gratuity scheme is to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contribute to the prosperity of the employer."

In a later decision of Jeevan Lal Ltd v. Controlling Authority (1984 Lab IC 1458) the Supreme Court observed thus:

> "It has been universally recognised that all persons in society needs protection against loss of income due to unemployment arising one of incapacity to work due to invalidity or old age, etc. The significance of the legislation lies in the acceptance of the principle of gratuity as a compulsory statutory retiral benefit."

6. From the above it is clear that gratuity is an amount payable to an employee for the purpose of safeguarding his life after cessation of employment. The object behind the same is akin to that of provident fund and welfare fund amounts. It is to

ensure that the employee does not become destitute after retirement that such amounts are being paid by way of gratuity. The question as to whether any deduction can be made from amounts of gratuity should be decided bearing the above wholesome object in mind. In fact it is in recognition of that object Section 13 has been incorporated in the Payment of Gratuity Act, whereby gratuity payable under the Act is protected from attachment in execution of any decree, order of any civil, revenue or criminal court. I agree with the contention of the learned counsel for the 1st respondent that if such deduction is permitted under law, an unscrupulous employer would have the tendency to deny his employees gratuity, on the pretext of deduction of amounts due from the employee to the employer, which would force the employees to embark on unnecessary litigation which they can ill afford. Therefore, I am of the opinion that keeping in mind the avowed object of the Payment of Gratuity Act, an interpretation in keeping with that object would be that except as authorised by the Payment of Gratuity Act, no deduction can be made from the gratuity amount due as per the Act. Of course, I note that the Calcutta High Court has in the

decision of **Sardar Sohan Singh v. Union of India and Others** (2007 (III) LLJ 523) and the High Court of Delhi has, in **State Farm Corporation of India Limited v Regional Commissioner & Another** (2007 (1) LLJ 763), held to the contrary. I respectfully disagree with those decisions. I am of the opinion that except as authorised by the Payment of Gratuity Act no deduction whatsoever can be made by the employer from the amounts due as gratuity to an employee. I am fortified in this view by Section 4(6) of the Act as per which, the gratuity due to the employee can be forfeited only if his services are terminated (1) for misconducts causing damage or loss or destruction to the property belonging to the employer (2) for his riotous or disorderly conduct or any other act of violence on his part or (3) for any act which constitutes an offence involving moral turpitude committed in the course of employment. If deduction as claimed by the petitioner can be held to be validly made, then notwithstanding Section 4(6), the employer would be entitled to deduct the loss caused by the employee on account of the misconducts referred to in the said Section even when his services have not been terminated on account of such

misconducts, which cannot be the object of the legislation.

7. I am further supported in this view by two single bench decisions and a division bench decision of this Court. In Rajendra Pai v. Canara Bank (1998 (1) KLT SN 33 page 38) a learned single judge held thus:

> "Even under the Payment of Gratuity Act, the gratuity can be withheld only under the circumstances mentioned in S.4(6) of the Act. It contemplates three circumstances mentioned in S.4(6)(a) and S.4(6)(b)(i) and (ii). Under S.4(6)(a), if the act or wilful omission for which the service of the employee is terminated has caused damage or loss, then the gratuity shall be forfeited to the extent of the damage or loss so caused. The other circumstances are when the services of the employee have been terminated for his riotous or disorderly conduct and if the services of the employee have been terminated for any moral turpitude. Clause (b) does not apply to the fats of the case. Under Clause (a) gratuity can be withheld if the act for which the services are terminated has resulted in loss to the Bank. Here the amount is withheld as damages for occupying the quarters of the Bank. This is not in any way connected with the conduct for which the petitioner's services were terminated. Hence, that amount cannot be withheld from the gratuity of the petitioner."

In Travancore Plywood Industries Ltd. v. Regional Joint Labour Commissioner, (1996 (1) KLT 330) another learned single judge held thus:

> "That apart, the main question is whether the petitioner-company will be justified in withholding the gratuity amount due to the third respondent on the specious plea that the third respondent failed to surrender that land which is in occupation by him. The eligibility of the third respondent's gratuity has to be decided on the basis of the provisions contained in the Act, under which the amount by way of gratuity due to an employee cannot be withheld otherwise then by fulfilling the conditions contained in Ss.4(6), 13 and 14 of the Act. Under the Act, the employer is entitled to withhold the gratuity

> of an employee only if the termination of the employee is under S.4(6) of the Act. Here, the employer has no case that the employer has terminated the service of the employee on any of the grounds mentioned in S.4(6) of the Act. The petitioner-company therefore, is not entitled to withhold the gratuity on the pretext that the third respondent is in occupation of the land belonging to the petitioner company. That apart, it has to be noted that the legislature itself has granted statutory protection for payment of gratuity to an employee by enacting S.13 under which no gratuity payable under the Act is liable to be attachment in execution of any decree or order of any civil, revenue or criminal court. S.14 of the Act and Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment other than the Act. S.4(6) read with Ss.13 and 14 is a complete answer to the petitioner's action in withholding the terminal benefit by way of gratuity due to the third respondent employee. In other words, amount of gratuity due to an employee can be withheld only on any of the grounds mentioned in the Act and not otherwise and at any rate refusal of the employees to surrender the land in his occupation in violation of the directive issued by the petitioner-company-employer, even if it is assumed that the land belongs to the employer cannot be treated as failure to settle the account by the employee thereby forming a basis for withholding dispersal of arrears of gratuity."

To crown it all, a Division Bench of this Court in the decision of Mathew v. Plantation Corporation of Kerala Ltd. (2000 (3) KLT 107) held thus:

> "The right to gratuity is a statutory right and it cannot be withheld under any circumstance, other than those enumerated in sub-s. (6) of S.4. "Gratuity" as the term itself suggests is a gratuitous payment given to an employee on retirement or discharge. This is in addition to other retiral benefits payable to the employee. Purpose of enactment of the Act was to confer extra benefits on the employees. As was observed in Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh (AIR 1965 SC 839) gratuity is a lump sum payment considered necessary for an orderly and humane elimination from industry of superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently.
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> In D.S. Nakara v. Union of India (AIR 1983 SC 130) in the

> context of pension it was held that gratuity is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. Such payment cannot be withheld unless specifically permitted by any statutory provision."

8. Therefore the consistent view of this Court has been that no deduction whatsoever can be made by the employer from gratuity due to an employee, except as specifically provided for in the Payment of Gratuity Act. Under the Payment of Gratuity Act there is no provision for such deduction except in Section 4(6), which can be invoked only when the employee's services are terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer, that too only to the extent of the damage or loss so caused or the other two contingencies mentioned therein. Clearly Section 4(6) is not applicable to the facts of this case and therefore the deduction sought to be made by the petitioner from gratuity due to the 1st respondent is clearly impermissible under law.

9. In any event such deduction, assuming to be permissible, cannot be of any liability or dues unilaterally fixed by the employer. Here the 1st respondent has disputed his liability

to refund any amount. There is no independent determination of such liability also. In the absence of any admission by the 1st respondent of his liability to refund any amount, the petitioner could not have validly decided that any excess amount has been paid by the petitioner to the 1st respondent, without such liability having been adjudicated upon by an independent authority. In any event no deduction could have been validly made without any notice and hearing to the 1st respondent which also does not appear to have been given to the 1st respondent by the petitioner. For this reason also the petitioner's contention cannot be accepted.

10. Regarding payment of interest as directed in Ext.P4 order, I do not find any merit in the contentions of the petitioner. Section 7(3A) stipulates that if the amount of gratuity payable to an employee is not paid by the employer within the period stipulated, the employer is liable to pay from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time in repayment of long-term deposits as the Government may, by notification specify. In this

case, the appellate authority has by Ext.P4 order directed payment of interest on the balance gratuity amount due to the 1st respondent at the rate of 10% per annum from 15.3.01. I do not find that the same is in any way exorbitant warranting interference under Article 226 of the Constitution of India. Therefore, I am not inclined to interfere with Ext.P4 also. In the above circumstances, the writ petition lacks merit and the same is dismissed, but without costs.

S.SIRI JAGAN,
JUDGE

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